



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Ms. Debra Weinberg
Police Legal Advisor
City of Plano
P.O. Box 860358
Plano, Texas 75074

OR95-1307

Dear Ms. Weinberg:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36759.

The City of Plano (the "city") received a request for copies of all records concerning internal affairs investigations of former police officers George Sparks and Robert Wrobel, including investigations pending when these officers resigned their positions with the Plano Police Department. The requestor also seeks records of internal affairs investigations of any current or former officers that were included in any probe of Sparks and Wrobel.

You state the city is releasing the complaints and dispositions of 26 investigative files that relate to the two named officers. You assert that the rest of these internal investigation files is not subject to required public disclosure pursuant to Local Government Code section 143.089 and several open records decisions of this office. You have submitted three files as a representative sample of the 26 files at issue.

You also say that the city is unable to comply with the request for information on any current or former officers that were included in any probe of Sparks and Wrobel unless the requestor clarifies what she means by "included in any probe." A governmental body should ask for clarification if it cannot reasonably understand a request. See Open Records Decision No. 304 (1982).

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information that is deemed confidential by statute. Section 143.089(g) of the Local Government Code provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

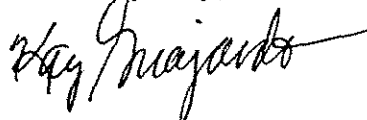
This provision makes confidential records included in a personnel file related to complaints against a police officer for which no disciplinary action was taken. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

Section 143.089(a)(2) of the Local Government Code requires the director of the police officers' civil commission or his designee to include in each police officer's civil service personnel file any document relating to any misconduct if the misconduct resulted in disciplinary action by the employing department in accordance with chapter 143 of the Local Government Code. Such records may not be withheld from disclosure under section 552.101 of the Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

None of the three files you submitted to this office resulted in disciplinary action against an officer. In two of the files, no disciplinary action was taken because the officers resigned before the police department imposed the discipline. The city must not release these files and any others which did not result in disciplinary action pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. If some of the other 26 files concern cases that did result in disciplinary action, those materials should be transferred to the civil service commission pursuant to section 143.089(a)(2) of the Local Government Code and must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

Ref.: ID# 36759

Enclosures: Submitted documents

cc: Ms. Nancy Donisi
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(w/o enclosures)